

CASE ANALYSIS

Fundamentals of Trial Advocacy Course August 21–25, 2017

KNOWING YOUR CASE FROM THE INSIDE OUT

Angela Andrews
Deputy Maricopa County Attorney

Mindset

► What is your goal?

- Get the Bad Guy / Girl
- Find the Truth
- Do Justice

Mindset

► What are potential barriers?

- Workload
- Training Issues
- Bias
- Others?

- **Read / Review EVERYTHING:**
- Reports
- Audio / Video Recordings
- Photographs
- Witness Statements
- Probable Cause / Booking paperwork
- Face Sheets

1. FORM NO. 100-1 (REVISED 10-1-60) 2. THIS FORM IS TO BE COMPLETED BY THE INDIVIDUAL OR HIS REPRESENTATIVE (including the Defendant). The answers given 3. should be true and correct to the best of the individual's knowledge. If the individual is a minor, the answers should be given by the 4. parent or guardian. If the individual is deceased, the answers should be given by the executor or administrator of the estate. 5. If the individual is a minor, the answers should be given by the parent or guardian. If the individual is deceased, the answers should be given by the executor or administrator of the estate. 6. If the individual is a minor, the answers should be given by the parent or guardian. If the individual is deceased, the answers should be given by the executor or administrator of the estate. 7. If the individual is a minor, the answers should be given by the parent or guardian. If the individual is deceased, the answers should be given by the executor or administrator of the estate. 8. If the individual is a minor, the answers should be given by the parent or guardian. If the individual is deceased, the answers should be given by the executor or administrator of the estate. 9. If the individual is a minor, the answers should be given by the parent or guardian. If the individual is deceased, the answers should be given by the executor or administrator of the estate. 10. If the individual is a minor, the answers should be given by the parent or guardian. If the individual is deceased, the answers should be given by the executor or administrator of the estate.		11. I, the undersigned, being duly sworn, depose and say that the foregoing is true and correct to the best of my knowledge and belief. 12. I declare under penalty of perjury that the foregoing is true and correct. 13. Executed on this 10th day of May, 1961, at New York, New York. 14. Subscribed and sworn to before me this 10th day of May, 1961, at New York, New York. 15. Notary Public in and for the State of New York. 16. My commission expires on the 10th day of May, 1962.	
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<p>INVESTIGATION OF _____ (Name) BY _____ (Name) DATE _____ (Date)</p>					<p>RELEASE QUESTIONNAIRE BY _____ (Name) DATE _____ (Date)</p>
<p>1. PURPOSE OF INVESTIGATION (State purpose) 2. SCOPE OF INVESTIGATION (State scope) 3. METHODS OF INVESTIGATION (State methods) 4. RESULTS OF INVESTIGATION (State results) 5. CONCLUSIONS (State conclusions) 6. RECOMMENDATIONS (State recommendations) 7. OTHER (Specify)</p>					<p>1. PURPOSE OF INVESTIGATION (State purpose) 2. SCOPE OF INVESTIGATION (State scope) 3. METHODS OF INVESTIGATION (State methods) 4. RESULTS OF INVESTIGATION (State results) 5. CONCLUSIONS (State conclusions) 6. RECOMMENDATIONS (State recommendations) 7. OTHER (Specify)</p>

Evaluating Your Case

- Can you prove your case beyond a reasonable doubt with the evidence you have?
 - ID?
 - Corroboration?
 - Physical evidence?
- If not, can the officer/deputy do follow up investigation?
- Can you do additional follow up?
 - Should you?

Evaluating Your Case

- Are your witnesses available? Are they cooperative?
 - If not can you prove your case without some witnesses?
- What about your victim?
- Is your case contingent on lab analysis? Expert witness?
- Prior convictions?

Evaluating Your Case

- Is case charged properly?
 - Date of offense
 - Name of victim/victims
 - Elements including definitions
 - Enhancements
- If not what is the remedy?
 - Move to amend?
 - Dismiss and Refile/Refile and Dismiss

Evaluating Your Case

- What are the defenses?
- Can you rebut them?
- Are there suppression issues?
- If so what evidence is still admissible?
- Is there missing evidence?
- *Willits* instruction
 - If you find that the State has lost, destroyed, or failed to preserve evidence whose contents or quality are important to the issues in this case, then you should weigh the explanation, if any, given for the loss or unavailability of the evidence. If you find that any such explanation is inadequate, then you may draw an inference unfavorable to the State, which in itself may create a reasonable doubt as to the defendant's guilt. *State v. Willits*, 96 Ariz. 184, 187, 393 P.2d 274, 277-78 (1964);

**Talk to
the defense
attorney.**



What Now?

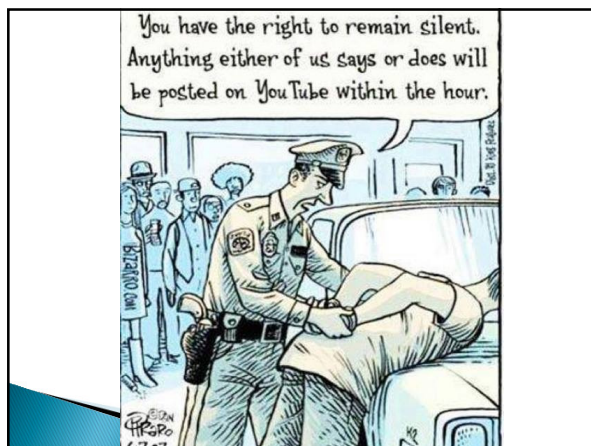
- Offer a plea agreement
- Dismiss/continue pending further investigation
- Dismiss because insufficient evidence?/No Reasonable Likelihood of Conviction at Trial
- Set matter for trial

Prosecution Standard

- ▶ State v. Gomez, 212 Ariz. 55, 59, 127 P.3d 873, 877 (2006) ("Indictments can be dismissed for various reasons, including a prosecutor's determination that the person charged did not in fact commit the crime or—as this case illustrates—that there is no reasonable likelihood of conviction").
- ▶ See Kenneth J. Melilli, Prosecutorial Discretion in an Adversary System, 1992 BYU L. Rev. 669, 684 (1992) ("[V]irtually all prosecutors require, at least at the time of trial, that the government's case present a reasonable likelihood of conviction.").

Pretrial Motions

- *Defensive Pleadings*
 - Suppression
 - Remand
 - Dismiss
 - Motion in Limine
 - Notice of a specific issue or action



Pretrial Motions

- *Offensive Pleadings*
- Notice pleading:
Allegations of priors / on probation / on release, etc.
- Motions in Limine
- Notice of a specific issue or action

Pretrial Motions

- Don't reinvent the wheel
- Office motion bank / library
- APAAC www.apaacz.gov
- NDAA www.ndaa.org
- Prosecutor's Encyclopedia
www.nypti.org

Pretrial Interviews

- Who attends?
- How recorded?
- Prepping for an IV
- Objections during interviews
- Problems/ Issues during interviews
- Evidence viewing

<https://www.youtube.com/watch?v=RjtnRmy0H-U>



Trial Preparation

- Proposed Jury Instructions
- Proposed voir dire
- Final Witness / Exhibit Lists
- Review Juror List, if available
- Confirm subpoenas
- Prepare trial notebook
- Visual Aids
- Prepare witness outlines

Witness Outlines

- Prepare ahead
- Cover elements of offense (s)
- Find what works for you
- Don't reinvent the wheel.

INTERVIEW

Q) Did you further interview the defendant? What did he tell you?

OUTLINE

1) Interview of Defendant

- a) He smoked meth with the clear glass pipe – 2 days earlier
- b) Smoked MJ that morning – “wake and bake”
- c) Didn't know the guy he bought the meth from in Cottonwood
- d) buys in bulk to save \$\$
- e) Addiction to meth
- f) meth will last a few mo.
- g) paid 1200 to 1500 / oz.

Witness Outlines

Note when/how
you will admit
exhibits.

Note relevant
points in
transcripts or
recordings that
you may want/
need to use.

*Q) Did he claim ownership of any
of the items?*

OUTLINE**1) D's claimed ownership**

- ▶ a) clear glass pipe with residue
(9a) photo is #9
- ▶ b) blue glass pipe with green
residue (10a) photo is #10
- ▶ c) "Red Glass" cigarette papers
- ▶ d) "blueberry skunk" papers
- ▶ d) clear bag with green leafy
substance **(13a) (photo is
#13)**
- ▶ **** Recording (#22 at 25:40)**

Theme

- ▶ Do you need one?

Theme

- Provide framework for jurors to follow
- Allows jurors to see facts from State's perspective
- Should be simple
- Doesn't have to be clever

Presentation

- Evidence
 - Photos
 - Weapons
 - Drugs
 - Documents
 - 911 calls
 - Jail calls
 - Other Physical Items

Presentation

- Different learners / different impact
- Pay attention to juror limitations
- Consider courtroom limitations
- Consider filing notices to court and defense regarding specific evidence

After Trial

- Debrief
- Evaluate
- Follow-up
- Prepare for next time!
